

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024

**ASSIGNED COMMISSIONER'S RULING DENYING
MOTION FOR CLARIFICATION**

This ruling denies the joint motion of three biomass generation facilities (Facilities), Community Renewable Energy Resources, Inc. (CRES), Madera Power, LLC (Madera), and Sierra Power Corporation (Sierra Power), requesting clarification of a prior Assigned Commissioner's Ruling.¹

The Joint Motion addresses a contract dispute between the three biomass facilities and Pacific Gas & Electric Company (PG&E) regarding the proper treatment of federal Production Tax Credits (PTCs). PG&E and The Utility Reform Network (TURN) oppose the Facilities' joint motion. The Facilities were granted leave to submit a reply to the responses of PG&E and TURN. The history of this issue is convoluted, but is laid out in the various parties' moving papers.

In general, this Commission is reluctant to insert itself into the middle of a contract interpretation dispute between two (or more) relatively sophisticated parties. That reluctance appears to be appropriate in this particular case.

¹ The full caption of the motion is: [insert full name]

The Facilities allege that PG&E is acting contrary to Section 19 of the applicable Power Purchase Agreement (PPA), which requires that that section “shall be modified or eliminated if the Commission modifies or eliminates its August 13, 2003 mandate in Assigned Commission’s Ruling Specifying Criteria for Interim Renewable Energy Solicitations.” (Joint Motion, pp. 3, 5.) According to the Facilities, PG&E has denied that it has any obligation to amend the contracts, despite the language of section 19. (Id.) The Facilities also make a number of arguments regarding the underlying substantive issue, the proper treatment of federal PTCs.

PG&E and TURN also make a number of substantive arguments regarding the proper treatment of PTCs, responding to the arguments made by the Facilities. PG&E does not disagree that the August 2003 mandate was modified in a later Assigned Commissioner’s Ruling. PG&E does, however, point out that the Facilities’ Joint Motion appears to bypass the PPA’s dispute resolution provision. (PG&E Opposition, pp. 4-6.)

TURN requests that the Commission allow PG&E to resolve this dispute through bilateral negotiations. (TURN Response, p. 1.) We will follow this recommendation, and we direct PG&E to negotiate with the Facilities in good faith, consistent with the letter and spirit of the applicable PPA. We also note that the PPA does have a dispute resolution provision, as pointed out by PG&E, and at this time the Commission is not prepared to substitute its processes for the process agreed to by the parties. If the parties cannot resolve their dispute through negotiation, then they should follow the dispute resolution process in the PPA.

Accordingly, we deny the Joint Motion, and direct the parties to negotiate, consistent with the terms of their PPA. The Facilities also sought leave to submit confidential material under seal. Because we do not need that material to resolve this dispute, the request to file confidential material under seal is denied, and our

Docket Office is directed to either return or destroy the confidential material submitted with, or in response to, the Joint Motion.

IT IS RULED that:

- 1) The Joint Motion for Clarification is denied;
- 2) Any confidential material submitted with or in response to the Joint Motion is to be returned or destroyed.

Dated June 28, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner